

**FRANK CASE
WAITS
ON
TRANSMISSIO
N
OF LEGAL
PAPERS**

Reported That
Remittitur
of Supreme Court
Will
Reach Clerk of
Superior
Court Some Time
Today.

FERGUSON
AFFIDAVIT

LATEST DEVELOPMENT

Witness Testified
Frank

Refused to Give Her
Mary

Phagan's Pay, But
Did

Not Say Girl Was
Coming
For It.

On Monday morning it is expected the legal chess game of the Frank case will be renewed when the remittitur of the supreme court refusing a rehearing of the case arrives at the desk of the clerk of the superior court. There is no authentic source for the prediction that the document will be transmitted on Monday, but it is freely reported that such will be the happening.

The legal procedure of the Frank case, both on the part of the defense and the prosecution, has been marking time ever since the decision of the supreme court not to grant a rehearing was rendered last week, and any further step is dependent upon the receipt of the remittitur by the superior court clerk.

Course of Solicitor.

Should the remittitur be transmitted Monday, as is anticipated, it is not expected, however, that Solicitor Dorsey will take any immediate action. His next move will be to swear out a writ of habeas corpus upon which to bring Leo M. Frank from the Tower before Judge Ben Hill to be resentenced.

It is known definitely that he will not make this move on Monday, and it may be the middle of the week before he asks for the writ.

Attorneys for neither side of the case are apparently in any haste to push the case to a close.

Whenever the solicitor does bring Frank before Judge Hill for a re-pronouncement of sentence, it is believed that the defense will petition the judge, under section 62 of the penal code, asking that he pronounce a sentence of life imprisonment instead of the death sentence. Section 63 gives the presiding judge the privilege of pronouncing a life imprisonment sentence in case where a conviction has been the result of circumstantial evidence.

Extraordinary Motion.

While the attorneys for the defense have made no statement as to what their next move would be, the fact that many new

affidavits which were not presented in the trial have been accumulated it is regarded as not improbable that they will file a motion extraordinary for a new trial before Judge Hill.

A failure in this move would leave open the recourse of an appeal to the United States supreme court upon constitutional grounds. Such an appeal, even if not successful, could have the effect of delaying the execution of the defendant.

The failure of this appeal would leave the last hope of the condemned man with the state prison board and the governor.

A petition for executive clemency would undoubtedly be made before the prison board.

Ferguson's Testimony.

Attorneys for the defense had no comment to make on Sunday upon the new affidavit which Detective Burke has secured from Helen Ferguson, charging Jim Conley with making advances upon her on the Saturday before the Saturday of the murder of Mary Phagan, which was disclosed by The Constitution on Sunday morning.

The testimony of Helen Ferguson at the trial was that she had called upon the superintendent of the pencil factory on the Friday before the fateful Saturday and asked for Mary Phagan's pay envelope, and that Frank had refused to let her have it. Attorneys for both the defense and the prosecution state that she did not testify that Frank told her he expected Mary Phagan to call for her pay on the next day, and that the brief of the evidence does not show such testimony, as was stated in error in Sunday's Constitution.

The Ferguson affidavit is one of several more that it is rumored are in the hands of the defense, upon which they may base a motion extraordinary for a new trial.

It is expected that Detective William J. Burns will arrive in Atlanta on Monday to make investigations as to the manner of the murder of Mary Phagan and attempt to locate the murderer.
